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In The

Supreme Court of the United States

October Term, 1997

PALM BEACH SOIL AND WATER CONSERVATION DISTRICT, a political subdivision of the State of Florida,

Petitioner,

vs.

MARK BLEDSOE,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

I. Does Title II of the ADA provide a claim for relief for employment discrimination by public entities of any size, despite:

A. the clear statutory language and framework of the ADA which indicates that Title I of the ADA applies to employment discrimination exclusively?

B. numerous incongruities which result from interpreting Title II to cover employment discrimination based on disability?

C. other indicia of Congress that Title I of the ADA is the exclusive remedy for employment discrimination based on disability?

LIST OF PARTIES

The parties to the proceedings in the court whose judgment is sought to be reviewed here include those who appear in the caption of the case. There is no parent or subsidiary of any party to be listed.

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Petitioner, Palm Beach Soil and Water Conservation District, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit ("Court of Appeals") is reported at 133 F.3d 816 (11th Cir. 1998) and is reproduced in the Appendix filed herewith ("App. A") at 1a. The opinion of the district court is reported at 942 F. Supp. 1439 (S.D. Fla. 1996) and is reproduced at App. C at 23a.

STATEMENT OF JURISDICTION

The judgment of the Court of Appeals was entered on January 22, 1998. The Court of Appeals denied a timely Suggestion of Rehearing *En Banc* on March 25, 1998.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

The pertinent provisions of Titles I and II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12111, *et seq.*, and 12131, *et seq.*, respectively ("ADA"), are set forth in the Appendix filed herewith: 42 U.S.C. §§ 12111(2),(5)(A), & (8), 12112(a), 12117(a), 12131(2), 12132 and 12133.

STATEMENT OF THE CASE

The facts of the case and the procedural background are as set forth in the opinion of the Court of Appeals:

I. Facts

> Mark Bledsoe ("Bledsoe") was employed as a Resource Technician for the Palm Beach Soil and Water Conservation District ("District") from January 1988 until his termination in October of 1992. The position required that Bledsoe spend a significant portion of his time walking, surveying, and performing manual labor in the fields. On February 26, 1990, while performing his duties, Bledsoe sustained an injury to his left knee for which he made a claim for workers' compensation benefits. Upon medical advice that he should avoid excessive walking and walking on uneven terrain, Bledsoe requested some form of accommodation from his supervisor. In response to his request, the District offered Bledsoe the position of Resource Conservationist, allowing him to write his own job description; he rejected the offer. In October 1992, the District terminated Bledsoe's employment. Subsequent to his separation of employment, Bledsoe settled his worker's compensation case and signed a joint settlement agreement.[1]

II. Procedural Background

Bledsoe brought this action under Title II of the ADA, 42 U.S.C. § 12131 *et seq.*, and the

1. The Court of Appeals' determination regarding whether the release signed when settling the workers' compensation case precluded Bledsoe from bringing an action under the ADA is not material to the questions presented in this case.

Rehabilitation Act of 1973, 29 U.S.C. § 794 *et seq.*, as amended by the Civil Rights of 1991, alleging that he was disabled within the meaning of the ADA, that the District failed to reasonably accommodate his disability and that the District discharged him as a result of his disability.[2] The District moved for summary judgment, arguing in part that Bledsoe's employment discrimination claim was not cognizable under Title II of the ADA. Thereafter, the Southern District of Florida entered summary judgment for the District on the ADA claim on the basis that Title II did not apply to employment and that the District did not fall within the purview of Title I, since it employed less than fifteen employees at all material times. Bledsoe appealed the district court's grant of summary judgment. On January 22, 1998, the Eleventh Circuit Court of Appeals reversed the district court's grant of summary judgment, holding that Title II does encompass a cause of action for employment discrimination. The District filed its Suggestion for Rehearing *En Banc*. On March 25, 1998, the Court of Appeals entered an order denying the District's Petition for Rehearing and Suggestion of Rehearing *En Banc per curiam*.

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2. The original complaint named both the District and Palm Beach County as defendants and sought relief under Title I of the ADA. However, the District does not fall within the purview of Title I because it does not employ fifteen or more employees. *See* 42 U.S.C. § 12111(5)(A). The District and Palm Beach County moved for summary judgment on various issues, including, the inapplicability of Title I to the District. On July 27, 1995, the district court entered an Omnibus Order granting summary judgment for Palm Beach County on the basis that it was not Bledsoe's employer and for the District on the ADA claim on the basis that the District did not fall within the purview of Title I. On January 4, 1996, Bledsoe filed his First Amended Complaint to seek relief under Title II of the ADA and the Rehabilitation Act.

REASONS FOR GRANTING THE WRIT

I.

The United States Court of Appeals for the Eleventh Circuit has decided important questions of federal law concerning whether Title II of the ADA covers public employment discrimination, ones which should be, but have not been, decided by this Court, i.e.:

- **Whether Title II of the ADA applies to public employment discrimination despite the clear text and statutory framework of the ADA which indicates that Title I of the ADA is the exclusive remedy for employment discrimination based on disability?**

- **Whether Title II of the ADA applies to public employment discrimination despite numerous incongruities which result from a contrary reading?**

- **Whether Title II of the ADA applies to public employment discrimination despite other indicia of Congress that Title I of the ADA is the exclusive remedy for employment discrimination based on disability?**

The Court should grant the petition for a writ of certiorari and should decide whether Title II applies to public employment discrimination. That question has not been, but should be, settled by this Court.

Similar to other courts that have interpreted the scope of Title II of the ADA without thorough analysis, the Eleventh Circuit Court of Appeals' opinion raises, and resolves, the following issue adversely to Defendant: does Title II of the ADA provide a claim for relief for employment discrimination by public entities of any size.

Admittedly, the majority of federal district courts have taken the view that Title II of the ADA covers a public entity's employment practices.[3] The opinions of the various district courts were based, in large part, upon the federal regulations promulgated by the Department of Justice ("DOJ") contained within 28 C.F.R. § 35.140 (1996), as mandated by 42 U.S.C. § 12134.

The Eleventh Circuit Court of Appeals relied primarily on its review of the statutory language of Title II, the DOJ's regulations, and other court's resolution of the issue to determine that the ADA encompasses public employment discrimination in this case.[4] 133 F.3d at 819; App. A at 8a. Careful scrutiny of the ADA, however, mandates a contrary conclusion.

The Americans with Disabilities Act as enacted on July 26, 1990, contains four subchapters. Subchapter I (Title I) is entitled "EMPLOYMENT"; Subchapter II (Title II) is entitled "PUBLIC

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3. *See, e.g., Wagner v. Texas A & M Univ.*, 939 F. Supp. 1297, 1309-10 (S.D. Tex. 1996); *Graboski v. Guiliani*, 937 F. Supp. 258, 269 (S.D.N.Y. 1996), *aff'd, Castellano v. City of New York*, __ F.3d __, 1998 WL 91216 (2nd Cir. Feb. 24, 1998); *Silk v. City of Chicago*, 1996 WL 312074 *10 (N.D. Ill. 1996); *Bruton v. Southeastern Pennsylvania Transp. Authority*, 1994 WL 470277, *2 (E.D. Pa. 1994); *Ethridge v. State of Alabama*, 847 F. Supp. 903, 905 (M.D. Ala. 1993); *Eisfelder v. Michigan Dept. of Natural Resources*, 847 F. Supp. 78 (W.D. Mich. 1993); *Finley v. Giacobbe*, 827 F. Supp. 215 (S.D.N.Y. 1993); *Petersen v. University of Wisconsin Bd. of Regents*, 818 F. Supp. 1276 (W.D. Wis. 1993); and *Bell v. Retirement Bd. of The Firemen's Annuity & Benefit Fund of Chicago*, 1993 WL 398612, *4 (N.D. Ill. 1993).

4. Prior to its decision in this case, the Court of Appeals has, in *dicta*, made the assumption that Title II of the ADA applies to public employment discrimination. *Holbrook v. City of Alpharetta, Ga.*, 112 F.3d 1522 (11th Cir. 1997); *McNely v. Ocala Star-Banner Corp.*, 99 F.3d 1068 (11th Cir. 1996).

SERVICES"; Subchapter III (Title III) is entitled "PUBLIC ACCOMMODATIONS"; and Subchapter IV is entitled "MISCELLANEOUS PROVISIONS." Titles I and II are the only subchapters at issue in this case, and they are located at 42 U.S.C. §§ 12111, *et seq.*, and 12131, *et seq.*, respectively. 42 U.S.C. § 12112(a) of Title I provides as follows:

> No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

The term "covered entity" means, *inter alia*, an employer. An employer is defined as:

> . . . a person engaged in an industry affecting commerce who has 15 or more employees for each working day, and each of 20 or more calendar weeks in the current or preceding calendar year. . . .

42 U.S.C. §§ 12111(2) & (5)(A). Local and state governmental entities are "covered entities" under the meaning of the ADA, and thus, subject to suit. *See, e.g., Bodiford v. State of Alabama*, 854 F. Supp. 886 (M.D. Ala. 1994).

The discrimination prohibited by Title II is, by definition, quite different than that provided in Title I. 42 U.S.C. § 12132 provides:

> Subject to the provisions of the subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be

> denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

Nowhere in Title II are the terms "covered entity" or "employer" used. Furthermore, the definition of a "qualified individual with a disability" in Title II differs significantly from the definition contained within Title I.

Under Title I, the term "qualified individual with a disability" is defined as "an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." 42 U.S.C. § 12111(8). Under Title II, the term "qualified individual with a disability" is defined without *any* reference to employment as:

> . . . an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the *receipt* of services or the participation in programs or activities provided by a public entity.

42 U.S.C. § 12131(2) (emphasis supplied).

To determine the respective meanings of Title I and Title II, the analysis must begin with the language of the statute. *Bread Political Action Committee v. Federal Election Comm.*, 455 U.S. 577, 580 (1982) (in the absence of a clearly expressed legislative intention to the contrary, the plain language of the statute controls its construction). Further analysis requires the court to look to the "design of the statute as a whole and to its object

and policy." *McCarthy v. Bronson*, 500 U.S. 136, 139 (1991) (citing *Crandon v. United States*, 494 U.S. 152, 158 (1990)); *K-Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (in ascertaining the meaning of a statute, the court must look to the particular statutory language at issue, as well as the language and design of the statute as a whole).

An examination of the statutory language and the design of the statute inevitably lead to the logical conclusion that Title I ("EMPLOYMENT") was specifically and exclusively enacted to address matters of employment, *i.e.*, inputs. Title II was enacted specifically to address the receipt of public services, *i.e.*, outputs. *See Iskander v. Rodeo Sanitary District*, 1995 WL 56578 (N.D. Cal. 1995), *aff'd on other grounds*, 121 F.3d 715 (9th Cir. 1997) (unpublished decision) (plaintiff misconstrued Title II of ADA because Title II applied to rendering of services to public by public entities, *i.e.*, public transportation, and did not apply to the defendant's composition of employees). A plain reading of the statute certainly does not reveal that Title II includes a prohibition against employment discrimination by public entities. *See Ethridge v. State of Alabama*, 847 F. Supp. at 905; *Silk v. City of Chicago*, 1996 WL 312074, *10; *Petersen v. University of Wisconsin Bd. of Regents*, 818 F. Supp. at 1278.

Many incongruities arise from holding that public entities may be sued for employment discrimination under either Title I or Title II.[5] The first incongruity that arises is that an entity that would not be considered to be an "employer" for purposes of Title I could be considered to be an "employer" for purposes of suit under Title II; it is only logical that one sues his or her

5. As a preliminary matter, such a holding renders Title I redundant insofar as it applies to public entities with fifteen or more employees. This reading of the ADA violates the rule of statutory construction that no provision of a statute should be construed to be redundant. *Kungys v. United States*, 485 U.S. 759, 778 (1988).

"employer" for acts of employment discrimination. However, nowhere in Title I does Congress state that the fifteen employee threshold is inapplicable to actions against public employers.

A second incongruity that arises involves a plaintiff who meets the jurisdictional requirements of Titles I and II. Such plaintiff will be subjected to different standards for determining whether he or she is a "qualified individual with a disability," depending upon which Title is applied.[6] Further, if a plaintiff is employed by a public entity with less than fifteen employees, then he or she will be subjected to a different standard than a plaintiff employed by a public entity with fifteen or more employees who chooses to pursue his or her claim under Title I. The disparity in these results coupled with the plain meaning of the ADA, provide further indicia of Congress' intent that only Title I encompasses employment discrimination claims.

A third incongruity that arises is that such interpretation vitiates the administrative exhaustion requirements contained within Title I, insofar as public entities and their employees are concerned. Title I incorporates the procedures of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5(e) and (f)(1) ("Title VII"), which require aggrieved employees to file a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC") before filing suit in federal court. The adoption of these procedures is set forth in 42 U.S.C. § 12117(a). Title II, however, adopts the remedies, procedures, and rights of the Rehabilitation Act of 1973, 29 U.S.C. § 794a, which does not require the exhaustion of administrative remedies. The end result is that an employee of a public employer, which meets the threshold requirements under Title

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6. The DOJ promulgated regulations which ignore the express definition of a "qualified individual with a disability" in Title II, and avoid this nonsensical result by referring to Title I substantive standards in cases that are also subject to the jurisdiction of Title I. 28 C.F.R. § 35.140.

I, may disregard and avoid the EEOC exhaustion requirement by simply suing under Title II of the ADA.[7] Indeed, in the State of Florida, such public employee will have four years to file a judicial complaint of disability-based discrimination under Title II.[8]

Although the courts in *Petersen v. University of Wisconsin Bd. of Regents*, *supra* and *Wagner v. Texas A&M University*, *supra*, and the Court of Appeals in this case, have explicitly or implicitly held that this result is permissible, the net effect is to render the plain language outcome of a Congressional act meaningless where public entities are concerned. As the district court in this case articulately stated:

> [T]he statute the majority of the district courts (and the Justice Department) give us is completely bewildering: both Title I and Title II apply to employment, although Title II says nothing at all on the subject and Title I lays out a comprehensive scheme to deal with employment issues; Title I says an employer must hire 15 employees to be sued for employment discrimination, but you can get around

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7. Indeed, the Eleventh Circuit Court of Appeals has held that no separate cause of action exists under 42 U.S.C. § 1983 for violations of the ADA or Rehabilitation Act based, in part, on the anomaly created by allowing a plaintiff to sue under Section 1983 and circumvent the administrative process of the ADA. *Holbrook v. City of Alpharetta*, 112 F.3d 1522, 1530-31 (11th Cir. 1997).

8. The Eleventh Circuit Court of Appeals has recently held that each state's respective statute of limitations for personal injury actions applies to Title II of the ADA, since Title II does not contain any limitations period. *Everett v. Cobb County School District et al.*, 138 F.3d 1407, 1409 (11th Cir. 1998) (applying Georgia two-year statute of limitations to Title II ADA claim). Florida's statute of limitations for negligence actions is four years. Fla. Stat. § 95.11(3).

> this under Title II if your employer is an arm of the State; and Title I says you must exhaust administrative remedies, but you can ignore this requirement too if you are employed by the State. If this is really what Congress meant, then the ADA surely must rank as one of the great drafting debacles of recent times.

942 F. Supp. 1439, 1445-46 (S.D. Fla. 1996); App. C at 35a-36a.

A fourth incongruity that may arise from holding that Title I and Title II overlap in the area of public employment is that a different measure of damages may apply. Pursuant to 28 C.F.R. § 35.140(b)(1)[9], the requirements of Title I of the Act (as established by the EEOC) apply to employment in any service, program or activity conducted by a public entity under Title II if that public entity is also subject to the jurisdiction of Title I. Title I of the ADA specifically adopts the damage remedies provided under Title VII; whereas, Title II adopts the rights and remedies of the Rehabilitation Act of 1973, which adopts the rights and remedies set forth in Title VI, 42 U.S.C. § 2000d, *et seq.* *See* 42 U.S.C. § 12117; 42 U.S.C. § 12134; 29 U.S.C. § 794a. The standard under Title VI appears to be "any appropriate relief."

The 1991 Amendments to the Civil Rights Act of 1994 make clear that intangible damages for mental anguish are recoverable under Title VII, the standard that is applied under Title I of the ADA. 42 U.S.C. § 1981a. *Turic v. Holland Hospitality, Inc.*, 85 F.3d 1211, 1215 (6th Cir. 1996). Under Title II, however, it is unclear whether the same damages are available because of the statute's reference to the Rehabilitation Act of 1973. *See, e.g., Tyler v. City of Manhattan*, 849 F. Supp.

9. This regulation, among others, was promulgated by the Department of Justice to carry out the provisions of Title II.

1442, 1443 (D. Kan. 1994), *order aff'd*, 118 F.3d 1400 (10th Cir. 1997); *Shuttleworth v. Broward County*, 649 F. Supp. 35, 36-38 (S.D. Fla. 1986). *But see Waldrop v. Southern Co. Services, Inc.*, 24 F.3d 152 (11th Cir. 1994) (citing *Franklin v. Gwinnett County Pub. Schs.*, 911 F.2d 617 (11th Cir. 1990), *rev'd on other grounds*, 503 U.S. 60 (1992)) (full spectrum of remedies under Rehabilitation Act of 1973).[10]

Another damage related incongruity that arises from interpreting Title II to encompass employment discrimination is found by examining 42 U.S.C. § 1981a(b)(3), which limits damages for mental anguish based upon the size of the employer. The provision sets a maximum award against employers of fifteen or more employees at $50,000, and up to $300,000 against an employer of more than 500 persons. The subpart applies only to Title I of the ADA. 42 U.S.C. § 1981a(a)(1). Does this mean that under Title II of the ADA a public employer of four persons would be subjected to unlimited damages for mental anguish for disability discrimination because the limitation only applies to suits under Title I, when an employer of 501 persons is only subjected to $300,000? The obvious answer is no. The limitations set forth in Section 1981a illustrate that only employers of fifteen or more persons are subject to employment discrimination suits, as a result of a Congressional balancing of interests, discussed *infra*.

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10. This Court has not specifically determined what damages are available under Title VI for intentional discrimination. *Cf. Guardians Assn. v. Civil Serv. Comm'n. of the City of New York*, 463 U.S. 582 (1982) (finding compensatory damages not recoverable for unintentional discrimination under Title VI). It has generally been recognized, however, that Title IX is patterned after Title VI and "analysis of the two statutes is substantially the same." *Franklin v. Gwinnett County Pub. Schs.*, 911 F.2d 617, 619 (11th Cir. 1990). The legislative history of Section 504 of the Rehabilitation Act also reflects that Congress explicitly patterned Section 504 after Title VI. *See* S. Rep. No. 1297, 93d Cong., 2d Sess. at 39-40, *reprinted in*, 1974 U.S.C.C.A.N. 6373, 6390.

By way of example, assume that Employee A is employed by a public entity with fifteen employees, and Employee B is employed by a public entity with fourteen employees. Both A and B have the same disability and are subjected to the exact same act of discrimination. Employee A could sue under Title II of the ADA when he is covered by Title I, but obtain damages allowed under Title VII based upon 28 C.F.R. § 35.140(b)(1). Employee B could only sue under Title II of the ADA, and may be entitled to much greater or different damages because of the unclear standard under Title VI of the Civil Rights Act of 1964. As well, Employee A could file suit against his employer without first filing a charge of discrimination with the EEOC, and Employee B would be able to sue his employer under Title II when the employer would not meet the definition of "an employer" under Title I. All the while, the same employees, A and B, of a private employer would not be treated in the same manner. The end result is absurd.

In determining that Title II of the ADA applies to public employment discrimination, the Eleventh Circuit Court of Appeals relied in substantial part on the Department of Justice's regulations providing that Title II prohibits discrimination by public entities as set forth in 28 C.F.R. § 35.140(a). 133 F.3d at 821; App. A at 12a. However, the regulations are awkward and in clear contravention of the ADA. Admittedly, it is the general rule that "considerable weight should be accorded to an executive department's construction of the statutory scheme it is entrusted to administer." *Chevron U.S.A., Inc. v. Natural Resources Defense Counsel, Inc.*, 467 U.S. 837, 844 (1984). Notwithstanding, the judiciary is the final authority when dealing with statutory construction, and the court must reject executive agency constructions of the statute which are clearly contrary to congressional intent. *Id.* at 843 n.9.

When a court engages in a review of an executive department's construction of a statute which it has been

designated to administer, the court must make two inquiries. The first is whether Congress has directly and clearly spoken on a particular matter. *Id.* at 842. The second question that must be answered, if the court determines that Congress has not directly and clearly addressed a particular issue, is to determine whether the executive agency's interpretation is a permissible construction of the statute. *Id.* at 843.

In the instant case, the answers to both of these questions militate against the interpretation offered by the Eleventh Circuit Court of Appeals and other district courts. First, Congress has directly spoken to the issue at hand. It has clearly and unequivocally stated that employment discrimination on the basis of disability is to be remedied under Title I of the ADA, with a minimum coverage of fifteen employees before being subject to the Act. Title II, which is mutually exclusive of Title I, deals with the receipt of public services, such as public transportation; therefore, the court need go no further because any administrative agency interpretation to the contrary is clearly contrary to the clear language of the statute. *See also Demarest v. Manspeaker*, 498 U.S. 184 (1991) (administrative interpretation of a statute contrary to plain language of the statute is not entitled to deference).

In determining that Title II of the ADA encompasses public employment discrimination, the Eleventh Circuit Court of Appeals also suggests that Congress legislated the ADA against the backdrop of *Consolidated Rail Corp. v. Darrone*, 465 U.S. 624 (1984). 133 F.3d at 821; App. A at 10a-11a. *Darrone* stands for the proposition that Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, prohibits discrimination and employment against handicapped individuals by recipients of federal financial assistance.

Contrary to the Rehabilitation Act, however, Congress in enacting the ADA, set up a more comprehensive and detailed

statutory scheme after seventeen years had passed.[11] As previously stated, Congress formulated three separate and distinct titles to the ADA; each one being mutually exclusive of the other. The fact that each section is mutually exclusive of the other, and that the clear language of Title I exclusively deals with employment discrimination, is further illustrated by reference to other acts of Congress.

The first point of reference is 29 U.S.C. § 794(d) (1992), which clearly and unequivocally states that the standards used to determine whether the Rehabilitation Act has been violated in terms of employment discrimination must be the same standard applied under Title I of the ADA. Nowhere in the Rehabilitation Act, as amended in 1992, is any mention made to Title II of the ADA when dealing with employment discrimination.

The second point of reference is the 1991 amendments to the Civil Rights Act of 1964, as found at 42 U.S.C. § 1981a(a)(2). Section 1981a is entitled: **"Damages In Cases of Intentional Discrimination In Employment."** Subsection (a)(2) provides that persons intentionally discriminated against by employers on the basis of disability are entitled to recover, among other things, compensatory damages under Title I of the ADA. As well, Section 1981a provides for a jury trial to a person seeking damages against an employer under Title I of the ADA. Again, no reference is made to Title II of the ADA. These two statutes reinforce the fact that Congress clearly and unequivocally desired that Title I of the ADA was the exclusive remedy for employment discrimination based on disability.

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11. In fact, Congress in enacting the Rehabilitation Act of 1973 set forth a threshold requirement that prevented the Act from being applicable to all employers, *i.e.*, the receipt of federal financial assistance. Therefore, the establishment of minimum criteria or thresholds is not a foreign concept to Congress.

A third point of reference is that the definition of an "employer" in Title I of the ADA mirrors the definition of employer in other federal anti-discrimination statutes pertaining to employment, specifically, Title VII and the Age Discrimination in Employment Act, 29 U.S.C. § 621, *et seq.* ("ADEA"). Courts have recognized that Title VII, the ADEA and the ADA "share a common structure in furtherance of a common purpose." *Stephens v. Kay Management Co., Inc.*, 907 F. Supp. 169, 172 (E.D. Va. 1995). As one court explained:

> [T]hese threshold requirements [of a minimum number of employees] reflect in each statute a balance, struck by Congress, between the goals of eradicating discrimination and protecting small enterprises from the hardship of litigating discrimination lawsuits.

Id. at 172. *Cf. Oscar Mayer & Co. v. W. Evans*, 441 U.S. 750, 755 (1979) (recognizing that the ADEA and Title VII share a common purpose in eliminating discrimination in the work place); *Price Waterhouse v. Hopkins*, 490 U.S. 228, 250 (1989).

Thus, to conclude that Title II covers employment discrimination, the Court must find that disabled employees of public entities are entitled to a protected status paramount to that of gender, age, race, religion and national origin. Such a result cannot obtain because all are groups that have historically been subjected to discrimination.[12]

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12. The Eleventh Circuit Court of Appeals relied, in part, on the legislative commentary or reports of committees of Congress to determine that Title II of the ADA encompasses public employment discrimination. 133 F.3d at 820; App. A at 9a-10a. However, any reference to commentary or reports of committees of Congress are inapposite. Courts have no authority to enforce a principal gleaned from legislative history that it has no statutory point of reference. *Shannon v. United States*, 512 U.S. 573 (1994). Additionally, courts should not resort to (Cont'd)

In summary, the Eleventh Circuit Court of Appeals has raised important questions about federal law and has answered those questions adversely to public employer defendants without reliance on the clear text and statutory framework of the ADA. These issues, which go to the heart of federal laws regarding disability-based discrimination in employment and Congressional balancing of interests in anti-discrimination statutes, should be answered by this Court. Thus, the Court should issue the writ.

CONCLUSION

Based upon the authorities and the argument presented, the Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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(Cont'd)
legislative history when a statutory text is clear. *Ratzlaf v. United States*, 510 U.S. 135 (1994). It is also a rule of law that congressional committee reports do not bear the force of law. *United States v. Thigpen*, 4 F.3d 1573 (11th Cir. 1993), *cert. denied*, 512 U.S. 1238 (1994). Again, in the instant case, the statute is clear and unambiguous as to claims for employment discrimination, and the legislative history, at best, is ambiguous and confusing; therefore, no deference should be given to the legislative commentary and reports.